

State of California



FAIR POLITICAL PRACTICES COMMISSION

428 J Street, Suite 620
Sacramento, California 95814
(916) 322-5660

CONSOLIDATED AUDIT REPORT:

Jerome Horton
Democrat Jerome Horton for Board of Equalization (1257906)
c/o Lance Olson
Olson Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814-4602

January 1, 2003 through December 31, 2006

TREASURER:

Kinde Durkee
Durkee & Associates
1212 S. Victory Blvd.
Burbank, CA 91502

CONTRIBUTIONS AND EXPENDITURES:

Total Contributions Received: \$ 1,415,976

Total Expenditures: \$ 1,548,824

The totals for contributions received and expenditures were taken from the unaudited campaign statements as filed with the Secretary of State for the period indicated above.

BACKGROUND INFORMATION:

The Committee is controlled by Board of Equalization Member Jerome Horton. Mr. Horton was a candidate for Board of Equalization, Fourth District, in the 2006 Primary Election. The Committee was terminated effective December 31, 2009, and reopened on October 27, 2010.

AUTHORITY FOR AUDIT:

This audit was made under the authority of Sections 90001, 90003, 90004, and 90006 of the California Government Code.

SCOPE OF AUDIT:

The audit was performed in accordance with generally accepted auditing standards and the auditing standards set by the Fair Political Practices Commission. The audit included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances.

OPINION:

Except as indicated in this audit report, the filers, in our opinion, have substantially complied with the disclosure and recordkeeping provisions of the Political Reform Act (Government Code Section 81000 et seq.) and related rules and regulations of the Fair Political Practices Commission.

REPORTS AND STATEMENTS

Late contribution reports were not filed for 9 contributions received totaling \$21,000, election cycle reports were not filed for 8 contributions received totaling \$13,600, and \$5,000 reports were not filed for 8 contributions received totaling \$41,500. Reports were filed for 229 other contributions received totaling \$763,350. Reference Exhibit A.

Ms. Durkee stated that to the best of her knowledge, all late contribution reports and \$5000 reports were filed timely and any reports which were not properly filed were likely a result of a possible computer malfunction in transmission. She added that it was discovered the Committee misinterpreted the election cycle reporting requirements and believed the election cycle ended the day prior to the election similar to the late contribution reporting period.

Mr. Olson stated that Ms. Durkee failed to correctly interpret the law and assumed the election cycle ended the day before the election, instead of election day. He added that in regard to the late contribution and election cycle reports, the harm to the public was minimized given the due dates were on or after the election. He further stated that Mr. Horton provided timely information to Ms. Durkee for filing the reports.

LOANS RECEIVED

A \$10,000 loan received on June 30, 2005, from the committee Re-elect Assemblyman Paul Koretz, which was repaid on January 25, 2006, and a \$10,000 loan received on February 6, 2006, from Friends of Paul Koretz each exceeded the contribution limit by \$3,400. At the time of the loans, Mr. Koretz was an Assemblyman and was limited to making contributions of not more than \$3,300 per election to state candidates. As a result, the maximum allowed for his loans was \$6,600.

Ms. Durkee stated that the Committee is prepared to repay the outstanding \$5,600 balance of the loan to Friends of Paul Koretz soon as it receives funds from Friends of Jerome Horton.

Mr. Olson stated that Mr. Horton relied upon Ms. Durkee to monitor contribution limits and assumed the loans were acceptable since Ms. Durkee did not advise him to the contrary.

EXPENDITURES

Subvendor payments made by Palisades Media Group, Inc. for television airtime totaling \$323,073 were not reported on the original campaign statement filed for the preelection statement period ending May 20, 2006. These payments were reported on an amendment to the May 20, 2006, statement filed electronically on June 6, 2006, and in paper format on June 13, 2006. In addition to reporting subvendor payments for television airtime through the end of the May 20 reporting period, subvendor payments made from May 24 through June 1 totaling \$297,267 were reported on the amendment. Further, the total of the subvendor information reported on the amendment was overstated by approximately \$109,592 due to including Palisades Media Group, Inc. commissions in the subvendor amounts.

Ms. Durkee stated that Palisades Media Group, Inc. failed to provide the subvendor information to the Committee timely enough for the information to be included in the preelection statement filed for the period ending May 20, 2006. She added that upon receipt of the information, the Committee promptly filed an amendment to report the information prior to the Election.

Mr. Olson stated that Mr. Horton relied upon Ms. Durkee to obtain and timely report subvendor information. He added that Mr. Horton understands that the media buyer, Pacific Palisades Group Inc., failed to timely provide that information to Ms. Durkee.

Unauthorized payments totaling \$8,244 made to Elsa Martinez, a then employee of Durkee & Associates, were not reported on the original campaign statements filed for the reporting periods ending December 31, 2005, March 17, 2006, and May 20, 2006. Amendments were filed on May 13, 2010, to report the payments; however, the payments were described on the amendments as made for campaign consulting instead of being fraudulent activity. On August 10, 2010, after

notification that the May 13 amendments were inaccurate, amendments were filed to change the description of the payments made to Ms. Martinez to fraudulent activity.

Ms Durkee stated that upon discovery of the unauthorized payments, amendments to the campaign statements were filed to disclose the information.

Mr. Olson stated that Mr. Horton was completely unaware of the embezzlement of his campaign funds by an employee of Ms. Durkee. He added that Mr. Horton learned of the embezzlement as a result of this audit. He further stated that Ms. Durkee appears to have affirmatively covered up the embezzlement through misreporting on campaign amendments, further deceiving Mr. Horton. Mr. Olson added that Mr. Horton also believes Ms. Durkee should have been aware of the embezzlement much earlier than reflected on the amendments which were filed after the audit commenced since the same employee embezzled funds from other clients of Ms. Durkee, something she was previously aware of several years earlier. Mr. Olson stated that Mr. Horton has terminated his relationship with Ms. Durkee as a result of this audit and now hired a law firm that specializes in political law and campaign reporting.

A \$4,500 payment to Durkee & Associates made during the semi-annual period ending June 30, 2005, was not reported on the original campaign statement filed for this period. The payment was disclosed on an amendment to the semi-annual statement filed in electronic format on October 22, 2009. However, the amendment to the semi-annual statement was not filed in paper format. In addition, 5 other amendments filed in electronic format on October 22, 2009, to change the cash balances to account for the \$4,500 payment were not filed in paper format. After notification during the audit, on August 11, 2010, amendments to the 6 statements were filed in paper format.

Ms Durkee stated that this was an unintentional clerical and/or computer error and upon discovery of the inadvertent omission, the campaign statements were immediately amended to account for this expenditure. She added that they believe the amendments were filed in electronic format and in paper format and at no time did the Committee receive notification from the filing officer that the copies were not received in paper format.

Mr. Olson stated that Mr. Horton did not approve the unreported billing by Ms. Durkee and was unaware that Ms. Durkee was paying herself and not disclosing this payment to her firm. He added that it was Ms. Durkee's responsibility to timely and properly file all campaign statements, including paper copies of amendments.

SURPLUS FUNDS

Campaign funds totaling \$110,923, which became surplus funds on June 30, 2006, were transferred on December 1, 2006, to Friends of Jerome Horton, a committee controlled by Mr. Horton which was formed for Mr. Horton's candidacy for State Senate in the 2008 election. In

addition, the \$110,923 was comprised of contributions raised for the 2006 general election and was required to be returned to the general election contributors.

Ms. Durkee stated that the Committee received information which indicated that this was an appropriate transfer of funds.

Mr. Olson stated that Mr. Horton affirmatively sought advice from Ms. Durkee regarding the propriety of transferring surplus funds to another controlled committee. He added that Mr. Horton was advised by Ms. Durkee that she obtained legal advice indicating the transfer was appropriate and lawful. Mr. Olson further stated Mr. Horton intends to transfer the funds back to the Committee.

Prepared by the Fair Political Practices Commission pursuant to Sections 90001, 90003, 90004, and 90006 of the Government Code. Adopted this 18th day of November, 2010.

EXHIBIT A - REPORTS NOT FILED

<u>Contributor Name</u>	<u>Amount</u>	<u>Date Received</u>
<u>Late Contribution Reports</u>		
7-Eleven, Inc.	\$1,500.00	06/05/2006
Bi Services Center, Inc.	\$2,000.00	06/05/2006
California Association of Highway Patrolmen	\$2,000.00	06/05/2006
California Grape & Tree Fruit League State FruitPac	\$1,000.00	06/05/2006
Reed Elsevier, Inc.	\$1,000.00	06/05/2006
The Roche Good Government Committee	\$1,500.00	06/05/2006
Roman Silberfeld	\$2,000.00	06/05/2006
The Drivon Law Firm	\$5,000.00	06/05/2006
United Association of Journeymen & Apprentices Local Union # 250	\$5,000.00	06/05/2006
Total Late Contribution Reports Not Filed	<u>\$21,000.00</u>	

Election Cycle Reports

Coto for Assembly 2006	\$3,300.00	06/06/2006
Dreyer, Babich, Buccola & Callaham LLP	\$2,000.00	06/06/2006
Jeffrey Anderson	\$2,500.00	06/06/2006
Novartis Pharmaceuticals Corp.	\$1,000.00	06/06/2006
Professional Engineers in CA Govt, PECG - PAC	\$1,000.00	06/06/2006
Redding Rancheria	\$1,000.00	06/06/2006
Time Warner Cable Shared Service Center	\$1,000.00	06/06/2006
T-Mobile USA, Inc.	\$1,800.00	06/06/2006
Total Election Cycle Reports Not Filed	<u>\$13,600.00</u>	

EXHIBIT A - REPORTS NOT FILED (cont.)

<u>Contributor Name</u>	<u>Amount</u>	<u>Date Received</u>
<u>\$5,000 Reports</u>		
Price Waterhouse Coopers	\$5,300.00	11/07/2003
Agua Caliente Bank of Cahuilla Indians	\$5,000.00	05/28/2004
Normandi Club	\$5,200.00	06/08/2004
California Commerce Club, Inc.	\$5,200.00	06/15/2004
Churchill Downs Inc Co Hollywood Park Racetrack	\$5,200.00	06/15/2004
Bay Meadows land Co. LLC	\$5,200.00	06/15/2004
The Bicycle Club	\$5,200.00	06/15/2004
Hollywood Park Casino	\$5,200.00	06/15/2004
Total \$5,000 Reports Not Filed	<u>\$41,500.00</u>	